

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAWN BRUMLEY)	
Claimant)	
VS.)	
)	
PRESBYTERIAN MANORS - MID-AMERICA)	Docket No. 143,302
Respondent)	
AND)	
)	
HARTFORD ACCIDENT & INDEMNITY)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

This case comes before the Appeals Board on remand from the Court of Appeals of the State of Kansas in the case of Brumley v. Presbyterian Manors - Mid-America, No. 75,628, unpublished (February 28, 1997).

APPEARANCES

Respondent and its insurance carrier appeared by and through their attorney, Frederick L. Haag of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Michael T. Harris of Wichita, Kansas. Claimant appeared not as she had previously settled her claim with the respondent.

ISSUES

The Kansas Court of Appeals reversed and remanded the Order entered by the Appeals Board on November 14, 1995, that had affirmed an Award entered by Administrative Law Judge John D. Clark dated June 15, 1995.

The Administrative Law Judge in his Award denied respondent's request for reimbursement of certain medical treatment expenses by the Kansas Workers Compensation Fund (Fund) pursuant to K.S.A. 1987 Supp. 44-534a(b).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case involves a request by the respondent to be reimbursed by the Fund for medical treatment expenses provided to claimant in the amount of \$44,608.69. The respondent claims such medical treatment was unreasonable and unnecessary to cure and relieve the effects of claimant's injuries. Respondent argued the Fund was required, pursuant to K.S.A. 1987 Supp. 44-534a(b), to reimburse respondent for the unreasonable and unnecessary expenses. The respondent contended the evidentiary record contained the uncontradicted testimony of Ernest R. Schlachter, M.D., of Wichita, Kansas, who established that all the medical treatment provided to claimant after June 20, 1989, was not medically reasonable or necessary.

The Administrative Law Judge found the Fund was not liable for the claim because K.S.A. 1987 Supp. 44-534a required a full hearing. The Administrative Law Judge found that because the parties entered into a settlement rather than asking for full hearing there was no authority to order the Fund to reimburse respondent for any medical overpayments.

The Appeals Board affirmed the Administrative Law Judge's decision but for a different reason. The Appeals Board found where a dispute arises concerning whether medical treatment already provided to the claimant by the respondent was reasonable and necessary, the proper procedures to follow for seeking reimbursement are contained in K.S.A. 44-510. That statute provides procedures where the health care providers are included as parties. If the medical treatment is determined to be unreasonable and unnecessary, then the health care providers, not the Fund, are required to reimburse the respondent. The Appeals Board found the respondent had not utilized the correct procedures set forth in K.S.A. 44-510 and therefore denied the claim.

The Court of Appeals in its unpublished opinion found the procedures under the utilization and peer review contained in K.S.A. 44-510 were enacted in 1990. Therefore, the Court of Appeals found that since claimant's injury gave rise to a claim that took place in 1987, and the utilization and peer review procedures contained in K.S.A. 44-510 affected the substantive rights of the health care providers, the amendment, therefore, should only be applied prospectively. The Court of Appeals in remanding the case to the Appeals Board stated as follows:

“In summary, prior to 1990, K.S.A. 44-534a and K.S.A. 44-566a provided the employer or its insurer the right to proceed against the Fund for reimbursement of compensation in the form of medical benefits which has been paid and where it is subsequently found that the amount of those benefits is greater than the amount the claimant was due. ‘The statute provides that the reimbursement be from the fund, not the claimant.’ Kansas Workers Compensation Handbook § 13.09 (1990). When such an issue is raised the ALJ should conduct a full hearing to determine if the medical benefits paid were reasonable and necessary. We remand for such a hearing.”

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge John D. Clark dated June 15, 1995, is, as ordered by the Kansas Court of Appeals, reversed and remanded to the Administrative Law Judge to conduct a full hearing to determine if the disputed medical benefits paid were reasonable and necessary.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Frederick L. Haag, Wichita, KS
Michael T. Harris, Wichita, KS
John D. Clark, Administrative Law Judge
Philip S. Harness, Director